REMARKS / ARGUMENTS

Claim 2 has been canceled, without prejudice, and claims 1, 15, and 23 have been amended. Therefore, upon entry of this Amendment, claims 1, 5-15, and 18-24 will be pending in this application. Applicant has carefully considered the Application in view of the Examiner's action and, in light of the foregoing amendments and the following remarks, respectfully requests reconsideration and full allowance of all pending claims.

Claim Rejections – 35 U.S.C. § 102

In paragraph 1 Of the Office Action, claims 1-2, 5-14, and 21-22 were rejected under 35 U.S.C. § 102 as being anticipated by *Eglan et al.* (U.S. Pat. Pub. No. 2003/0023505). Applicants respectfully traverse, but have nevertheless amended independent claims 1 and 15 to further clarify the present invention.

Specifically, claims 1 and 15 have been amended to explicitly recite that the initial pricing of each file is based on the "historical demand for other content files authored by the respective content creators of each of said first and at least second content files". In other words, when initially pricing the content files, the present invention develops pricing indicia based on historical demand for one or more different files, files that share a common creator with the filed being priced. The basis for this clarification may be found, for example, in paragraph [0020] of the present Application. Applicants believe this intent might have been fairly inferred from the claims as previously recited, but acknowledges that the Examiner may disagree.

In the Response to Arguments of the current Office Action, for example, the Examiner states, "in response to applicant's arguments" that "Elgin et al. discloses the price model for dynamically pricing the item, the initial price for the item, and the marginal cost of the item are stored . . . . The current demand, or the number of times the item was purchased within a specific period . . . ." In reciting the initial pricing step of claim 15, however, or the initial price indicia associator of claim 1, it is not historical data relating to "the item" (the first or at least second content files) that was intended. Rather, the historical data referred to in those claims relates to other content files authored by the same content creator.

This misunderstanding is also reflected in rejection of claims 1 and 15 itself, which refers to *Eglan et al.* paragraphs [0059]-[0060], [0063], [0136], and Fig. 3. Applicants acknowledge that many types of information are stored in the various tables illustrated in Fig. 3 and recited in paragraphs [0059]-[0060] and [0063]. They are not said to be referenced in initial pricing, however, and in fact this appears not to be the case. After an extensive discussion of methods for adjusting the initial price based on a variety of factors (*Eglan et al.* paragraphs [0085]-[00135]), paragraph [0136] simply states that "a number of different people can set the initial price of an item. For instance, the artist, content supplier, owner of the item, and/or the system administrator . . . ." *Eglan et al.* certainly does not specify (in a total of 163 paragraphs and 34 figures) the initial price indicia associator of claim 1, or the step of initially pricing in the manner recited in claim 15. Given the great detail supplied throughout *Eglan et al.*, in fact, it is hard to believe that the apparatus and method of, respectively, claims 1 and 15 would not have been described had they occurred to the *Eglan et al.* inventors. This is confirmed with reference to paragraph [0123], which mentions that initial prices may be set by "default prices and/or historical prices for similar content". Again, the apparatus and method of claim 15 are not suggested here despite a prior note that the "content supplier and/or the system administrator can set the initial price".

Claim 23 has been amended to clarify that the recited basis for initial pricing is in addition, not alternative, to the basis recited in claim 15. Applicant notes that claim 23 does not appear to have been rejected in the Office Action (though it is listed as such in the Summary, no grounds are recited). Nor can Applicants find a basis for such a rejection in *Eglan et al.* (refer to the discussion of paragraphs 123] and [0136], above.) Applicant further notes that paragraphs [0050] and [0162], while indicating that the *Eglan et al.* system may be used to sell items delivered physically as well as electronically, there is no mention of the type of delivery mechanism being useful in pricing (initially or otherwise).

The apparatus and method of the present invention, as currently recited, is taught or suggested *only* by the present Application.

Claim 2 has been canceled without prejudice. The remaining pending claims depend directly or indirectly from a respective one of independent claims 1 or 15, and are distinguishable from the cited reference for the reasons set for above.

To the extent necessary, Applicants also re-urge the arguments made in previous Responses, and in teleconference with the Examiner, in light of the remarks set forth above.

In light of these remarks and the amendments made herein, Applicants respectfully suggest that this ground for rejection has been overcome.

Applicants have now made an earnest attempt to place this Application in condition for allowance. Therefore, Applicant respectfully requests, for the reasons set forth herein and for other reasons clearly apparent, full allowance of all pending claims so that the Application may be passed to issue.

Should the Examiner have any questions or desire clarification of any sort, or deem that any further amendment is desirable to place this application in condition for allowance, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,

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